PART IV.

Section 1-C

RULES, ORDERS AND NOTIFICATIONS UNDER CENTRAL ACTS AND ORDINANCES.

NOTIFICATION.

No. L.S. 4595—L.W. 273-52-2, dated Bangalore, 25th November 1952.

Ordered that Notification No. S.R.O. 1344, dated the 29th July 1952, of the Government of India, Ministry of Labour, publishing the award of the All India Industrial Tribunal (Bank Disputes) relating to grant of interim relief to workmen in Banking Companies, in the *Gazette of India* Extraordinary, Part II, Section 3, be republished in the *Mysore Gazette* for general information.

By Order and in the name of the Rajpramukh,

N. R. JAYA RAO,
Secretary to Government,
Law Department.

GOVERNMENT OF INDIA.

MINISTRY OF LABOUR.

NOTIFICATION.

New Delhi, the 29th July 1952.

S.R.O. 1344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the All India Industrial Tribunal (Bank Disputes) relating to grant of interim relief to workmen in banking companies.

AWARD

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES), BOMBAY.

I.A. No. 14/52 (Application by All India Bank Employees' Association), I.A. No. 27/52 (Application by Federation of Bank of India Staff Unions) and other demands for interim relief in Reference No. 1/52 (S.R.O. 36, dated 5th January 1952).

In the matter of the main adjudication of the dispute specified in Schedule II to the Government of India, Ministry of Labour Notification No. S.R.O. 36, dated 5th January 1952, between Banks and their workmen, and directions for interim relief regarding dearness allowance, working hours and overtime and medical relief.

Certain demands for interim relief on behalf of a large section of Bank employees have been pressed before us. The All India Bank Employees' Association has filed a regular application praying for interim relief on behalf of the employees of its constituent unions. Thirteen Exchange Banks employees unions have joined in the request; so also employees of unions affiliated to the Indian National Trade Union Congress. These demands relate primarily to three matters :

(1) Restoration of Sen Award working hours and overtime payment.

(2) Payment of dearness allowance according to the Sen Award formulæ wherever there is a rise in the cost of living index.

(3) Medical Relief on the lines of the Sen Award.

2. The Bank managements oppose the grant of any interim relief primarily on the merits and also on legal points. Lengthy arguments have been advanced before us. We have considered the matter very carefully. We will pass a comparatively short order because in a matter dealing with these important subjects at this interlocutary stage it is not desirable to make observations which are likely to be construed as pre-judging or tending to pre-judge the issues which must await a fuller investigation.

3. We take up the question of law first. If we have no power to grant interim relief at all there is no need for consideration of the question on the merits. Mr. H. M. Seervai contended that the Tribunal cannot legally grant any interim relief firstly because interim relief is not one of the disputes referred to the Tribunal for adjudication. Secondly, it cannot even be said to be incidental to any points of dispute found in the reference within the meaning of Section 10, clause (4) of the Industrial Disputes Act, 1947. Thirdly, the Legislature having provided for interim relief by Section 7 of the Industrial Disputes (Amendment and Temporary Provisions) Act, 1951, the Tribunal's jurisdiction, both expressly and impliedly, must be taken to have been excluded.

4. So far as our legal power is concerned the matter is concluded by a number of decisions in favour of affirming the existence of such a power. It is sufficient to refer to the following decisions :—

(1) Punjab National Bank, Ltd., and their workmen—June 1952 Labour Law Journal, page 791.

(2) Punjab National Bank, Ltd., *versus* A. N. Sen and Others—March 1952 Labour Law Journal, Vol. I, page 371.

(3) Thakur Yugol Kishore Sinha *versus* the State of Bihar—March 1950 (2) Labour Law Journal, page 539.

The first of these decisions is by the Labour Appellate Tribunal and the other two by High Courts. Mr. Seervai concedes that so far as this Tribunal is concerned the matter must be taken to be concluded by the latest decision of the Labour Appellate Tribunal. It is also significant that the said decision deals with a contention based on the amendment of Section 10, clause (4) of the Industrial Disputes Act, 1947, and its effect on the definition of the term " Award " in Section 2 in the main Act. He, however, desires to press this contention before us as he wants to

raise the point, if need be, before higher Tribunals. He contends that even the latest decision of the Labour Appellate Tribunal requires reconsideration and that an argument based on Section 7 of the Industrial Disputes (Amendment and Temporary Provisions) Act, 1951, has not been considered in that decision. We do not wish to discuss the matter further. We hold that there is power to grant interim relief if a proper case is made out. We accordingly turn to the merits of the dispute between the parties.

5. The first important question is the one relating to working hours. The demand is for restoration of working hours as per Sen Award together with overtime payment as fixed by that Award. The Sen Award provided for the clerical staff 6½ hours per week day and 3½ hours per Saturday, totalling 36 hours per week exclusive of recess. For the subordinate staff it provided for 7½ hours per week day and 4 hours per Saturday making in all 41½ hours per week. Overtime payment at double the usual rate was also to be paid by the banks. Overtime work commenced immediately on the close of the working hours as stated above. In other words, there was no "cushioning" for any short period during which time there was to be no overtime payment. After the Sen Award was declared void, there appears to have been a tripartite conference between the Government, the representatives of banks managements and of bank employees. The situation created by the judgment of the Supreme Court appears to have been carefully discussed. An understanding on certain points of dispute was arrived at between the parties but not on all items. The Industrial Disputes (Amendment and Temporary Provisions) Act, 1951, was thereupon passed by the Legislature. It was followed by the appointment of a Tribunal. When the members of that Tribunal resigned there was some delay in the constitution of the present Tribunal. During the interval most of the banks increased their working hours. The employees raised strong objections. Even now, in some places they are not working according to the new hours as prescribed. In other places they resisted for some time but they were ultimately made to yield. It is in these circumstances that the present demand for the restoration of the Sen Award working hours is made before us.

6. The main contention before us is that the present working hours are in some places very long and extend to as many as 54 hours in one out of the way places. Even in some important cities the working hours have been increased beyond the Sen Award hours and no overtime is paid. During the arguments we called for statements from the Banks showing the pre-Sen working hours, working hours during the Sen Award period and the post Sen period. Exhibit B2 filed on behalf of the banks is such a statement. Most of the important banks have given their present hours. A distinction has been made between the hours prescribed by circulars and the actual working hours in practice. It was pointed out that in several cases the employees are allowed to leave as soon as the day's normal work is finished. From the statement it is clear that there is great variation in the number of working hours of banks as at present. *Prima facie* it is difficult to see any justification for this. There ought to be a fairly uniform period of working hours for all employees in banks just as there is or ought to be in Government offices and well-ordered commercial concerns. Mr. A. S. R. Chari contended vigorously that the increase in the working hours by banks varied according to the strength or weakness of the trade union movement in several places in the country. In some places where the union is weak working hours have been increased enormously to the great detriment of the health of the employees. The banks stated that in practice what appears to be long hours are not observed, such hours being fixed merely for purposes of calculation of overtime beyond those hours. The banks further stated that where the normal day's work is done, the employees are permitted to leave the premises.

7. We consider that it is desirable to have a uniform number of hours applicable to all banks. This must be *prima facie* in conformity with and not much in excess, if at all, over office hours of middle class employees in Government and allied concerns. The Award of Shri B. B. Singh fixed 41½ hours for U.P. Banks. The Award of Shri R. Gupta in Calcutta fixed 36½ hours with no overtime at all for the employees of the Imperial Bank of India in Calcutta and Bengal Circle. The Sen Award fixed 36 hours all through and ordered overtime payment for work beyond those 36 hours at the usual double rate. A study of the various working hours by different banks at different places as set out in Exhibit B2 shows that in effect they vary from 36 to 44 normally; in some cases, they even go beyond. It was pointed out that immediately the Sen Award became effective banks reduced banking hours for the public by half an hour on each week day and by about an hour on Saturday and also Saturday clearing was stopped. It was contended on behalf of the employees that this was a deliberate concerted move to prejudice the Sen Award in the eyes of the public. The banks' reply was that from the past experience of several years, the reduction in working hours as fixed by the Sen Award necessitated reduction of business hours for the public. We are not at present coming to a conclusion on that point one way or another. We are of opinion that taking all the circumstances into consideration a maximum limit of 39 hours per week made up of 7 hours per week day and 4 hours per Saturday exclusive of recess should be fixed as applicable to all banks purely as an interim measure, pending the determination of the question by our final Award. This decision has the advantage of abolishing the astounding variety of working hours as at present and substituting a fairly uniform standard. Secondly, it certainly curtails the excessive hours of work in some of the out-of-the way branches and in some banks about which we had loud protestations. It is more or less in accordance with the requirements of work as found in the working hours statements of the major banks in the major cities. Though it increases the Sen Award working hours by 3 hours per week it also permits the retention of the present banking hours, as well as retention of the Saturday clearing. The convenience to the public is not affected. There is considerable relief to the employees from over-work. A fairly uniform standard is laid down and, besides, there is another advantage relating to overtime payment to which reference will be made below. Reiterating again that we do this purely as an interim measure and without any way pre-judging the issue, we think this limit of 39 hours maximum will be a just and equitable solution of the problem. We therefore, order that the present working hours of the banks wherever they are less than 39 hours should be retained but anything over 39 hours should be given up. 7 hours during week days and 4 hours on Saturday will be allowed. There must, of course, be an interval of not less than half an hour for lunch during week days. This is exclusive of the 7 hours fixed above. These will be the limit of prescribed hours, but it is hoped, that in practice as was stated by some of the big banks the actual hours may fall short and employees will continue to be allowed to go as soon as their day's work is finished. Further, we direct overtime payment for period beyond 7 hours on week days and 4 hours on Saturday as per the scale of the Sen Award. The banks complained that there is a tendency on the part of the workmen to go slow because of the overtime payment allowed by the Sen Award particularly as there was no cushioning or an intermediate period beyond the stated hours of work. What we have provided will really operate as having the cushioning effect for a period of half an hour every day beyond the hours fixed by the Sen Award. This is for the clerical staff. As regards subordinate staff, we fix the maximum number of working hours at 42½ per week. From all these points of view, it appears to us eminently just and reasonable that an order in the above terms should prevail during the pendency of our enquiry and until our Award becomes enforceable.

8. The second question of importance relates to dearness allowance. The claim of the Unions is that dearness allowance should be paid as per the Sen Award formula wherever there is a rise in the slab due to the rise in the cost of living index. Mr. Phadke for the Exchange Banks had asked for dearness allowance at an increased flat rate but he withdrew that claim and chose to fall in line with the claim of the other Unions as stated above. This claim proceeded on the footing that Section 7 of the Industrial Disputes (Amendment and Temporary Provisions) Act, 1951, froze the dearness allowance at the March 1951 'rate' meaning thereby 'the amount' paid in March 1951; in other words, any fall in the slab is not to affect adversely the employees. At one time it was stressed that this was not the proper interpretation of Section 7 of the Act. It was urged that on true construction, it directed a rise in the payment of dearness allowance according to a rise in the cost of living index. Emphasis was laid on the use of the word "rate" as distinct from "amount", but when it was pointed out that that argument would amount to this that the Legislature had already granted them substantially by statutory provision what they now ask the Tribunal to grant by way of discretionary interim relief and that the Legislature itself had provided a remedy for realization of the correct amount, it was felt that that method of approach to the problem was not the proper one. Ultimately, therefore, the employees rested their case on the assumption that the Legislature froze the amount as in March 1951 and it did not permit a fall. On that footing, it was urged that ever since April 1951, there has been a considerable rise in the cost of living index in various parts of the country which rise altered the slabs in favour of the employees and entitled them to higher dearness allowance at the increased slabs. Detailed charts showing the cost of living index figures in various places during the months of 1951 and the first 3 or 4 months of 1952 have been filed by the parties before us. An examination of these charts shows that there has been a rise in some parts of the country in the cost of living index which has increased the slab for calculation purposes. We find, on a close inspection, that the slab has been steady throughout in Madras and in Nagpur, but in Bombay for five or six months only there has been a rise, otherwise it is steady. In Calcutta, there has been an increase of one slab down to December 1951 but otherwise it is steady. There has been an increase by one slab in Kanpur and Delhi. We have considered the major places. We called for figures from banks as regards the number of branches in different States and the present number of employees. Most of the major banks have furnished such statements. We find that nearly 13,000 workmen are in West Bengal, about 10,000 in Bombay, about 5,000 each in Madras and U.P. and about 2,500 in Delhi. In some areas the number is really less than 2,000 and in some other places even less than 1,000. That gives a rough picture of the distribution of employees amongst banks in the various parts of the country. It is clear, therefore, that there is a rise which may be said to affect only one half of the total number of employees. The extent of such rise in the cost of living index has been set out above, Mr. Chari calculated what would be in effect a loss sustained by the employees by the non-implementation of the Sen Award by not giving higher dearness allowance according to the increase in the cost of living index. His chart shows that speaking broadly and generally, about a month's salary for the whole year may be said to be withheld from the employees. A study of the cost of living index reveals that generally the rise has been by not more than 10 points on an average for 4 or 5 months, and it never exceed 16 points. Such increase in terms of points may however work out in terms of percentage to something like 5 per cent, and in some cases a little more. The Banks' contention therefore was that there has not been an appreciable rise in the cost of living index so as to cause acute distress of a kind which calls for urgent interim relief pending the passing of an Award by this Tribunal. Our attention was drawn to the test laid down by the Sen Tribunal in the various interim awards which they gave

from time to time wherefrom it appears that unless there is a rise of about 25 per cent, or thereabout so as to justify an inference of an acute distress, interim relief was not called for. This test was no doubt applied to cases where generally there was a prior award fixing reasonable scales of pay and dearness allowance. Moreover, it was pointed out that the freezing of the employees' salary at the 1951 March level itself secures for the employees a decent amount by way of salary which, compared with what they were getting in pre Sen period, really comes to an increase ranging from 25 to 30 per cent. It was contended that the employees were not so badly off and the temporary rise in the cost of living index to some extent does not justify the grant of interim relief, particularly when we find from the study of the figures of the cost of living index from January 1952 onwards the tendency is towards a fall in prices. It is true that due to withdrawal of food subsidy the tendency towards a fall has been arrested and there is a slight increase in the month of April and possibly May also in some parts of India, but on the whole the picture that emerges is a slight rise in the remaining months of 1951 and a fall in 1952. The rise, however, is not appreciable. The slab, it must be remembered may vary by one unit even when there is an increase of a few points, as, for instance, between 138 and 142. The former will be three slabs and the latter four though the increased points are only 4 in number. Taking a broad view of the matter and remembering that this is only an interlocutary stage when the full enquiry is not before us, we do not think that a case for grant of dearness allowance as per Sen Award formula is made out. Further, the Legislature having addressed its mind to the particular question of pay and allowances and how the matter should be dealt with during the interval, we think that what the Legislature has provided for must be deemed to be sufficient unless a very clear case is made out. Moreover, it was pointed out that a large number of the employees have drawn their increments in February 1952 and received increased dearness allowance. Bonuses also have been declared and paid in several cases. On the whole we are not satisfied that the level at which pay and allowances have been stabilised is so low as to require the grant of an immediate relief through increased dearness allowance as prayed for. The rise, such as it is, is not, in our opinion, so marked as to call for relief being granted now.

9. We have to say a special word with regard to banks in Part 'B' States. It was contended that Part 'B' States did not have the benefit of the Sen Award or Section 7 of the Industrial Disputes (Amendment and Temporary Provisions) Act, 1951, and the pay scales in most of these banks are very low and have been low for several years. In their case the suffering is said to be acute. It was however made known to us that most of the major banks have adopted the Sen Award scales in Part 'B' States also with the result that the present scale of salary there is on Sen Award lines. It is only with reference to four or five banks figures were given to show that the pay scale was low but even there on examination it was found that there has been since then a revision of pay scale in recent times and therefore no special case is made out for the banks in such States. In the result this prayer as regards dearness allowance is refused.

10. The third item for which interim relief is asked relates to medical relief Amenities by way of medical relief were being given in some of the big banks even prior to the Sen Award. The Sen Award provides for medical relief in all cases but regulates it with regard to different classes of banks. The Sen Award was in force only for a few months. Most of the bank employees did not have the benefit of medical relief before the Sen Award period and after the Sen Award period they have been denied such relief. The employees now demand the restoration of the benefits as per Sen Award. The banks complain that this cannot be adopted

in toto and the Sen Award itself requires many modifications. It was particularly pointed out by 'A' Class banks that no upper limit has been fixed with regard to medical expenses bills. A limit has been fixed for 'B' and 'C' Class banks. They complain that there have been several instances of what they characterise as a misuses of medical relief benefit by the employees. We are not now in a position to go into the merits of the dispute, but broadly speaking medical aid is certainly an urgent matter. From a humanitarian point of view the banks should not hesitate to give reasonable medical relief to their employees where they can afford it. Undoubtedly, social security schemes are essentially part of the duties of the State as a whole, but it has been recognized that institutions and establishments should contribute towards the same, at least so far as their own employees are concerned. The materials before us not being full, we should ordinarily have hesitated to give any direction so far as this medical relief claim goes, still we feel that it should not be too much of a burden on banks if we give some kind of relief now pending our final award. 'A' Class banks have stated before us that even now they continue to have doctors in various important centres where free consultation is allowed and usual mixtures are given free. Only costly injections are not given free. In some cases where there is a real need for treatment involving expenses they generally grant a portion of such expenses. We have not before us any figures relating to the amount spent by banks under this medical relief item as per Sen Award. All that we can do therefore in the present case is to say that all existing facilities by way of providing for doctors and free consultation and free medicines should be kept up and the banks should further implement the provision relating to payment of bills but subject to a limit to be imposed by us. The limit for 'B' and 'C' Class banks is as per Sen Award. For 'A' Class banks the limit will be at double the rate fixed for 'B' Class banks in the Sen Award. These directions in our opinion, will provide a working basis which, while not denying *in toto* medical relief to employees, secures to them at least some part of their prayer.

11. Lastly, certain special matters were brought to our notice in relation to individual banks and employees in particular offices. In the course of the discussion before us a solution of many of these matters was agreed upon between Counsel and in some cases there was a promise that all the matter would be considered with a view to remove all legitimate grievances. We do not want to give any directions now on any of these matters as there is no need to do so.

12. There yet remains one question as to the form in which the relief is to be given. It was suggested to us that we should pass what is known as an "order" as distinct from "award". If it is an Award it has to be sent for publication. If it is an order it need not go for publication. The essential difference consists only in the time factor. Our attention was drawn to a decision of the Labour Appellate Tribunal which holds that it is only the final Award which requires to be sent for publication. In this view it was urged that we can pass an interim 'award' or an interim 'order' or 'decision' which did not need publication by Government for it to become effective. The employees' Counsel stated before us that this is what they wanted. The Banks' Counsel suggested that there might be some legal difficulty particularly with reference to the method of giving effect to the order. The employees' Counsel categorically stated before us that they would take the risk whatever it may be of our passing an order instead of an award. In our opinion mere nomenclature is really not the relevant consideration. The real question is whether we can make our decision by whatever name we call it, to take effect from the date to be fixed by us without pre-publication by Government. We are of opinion that as per the judgment of the Labour Appellate Tribunal already referred to we may adopt the course of reading out our decision and passing an order

directing its enforceability even before publication. As a matter of precaution we also propose to send a copy of this decision in the form of an interim award for publication to Government not only for avoiding a possibility of any legal difficulty in enforcing the order but also for carrying it out more effectively.

13. The directions regarding working hours as above will come into effect from 4th August 1952. As regards medical relief it will come into effect from 1st August 1952 but bills already received by the banks before 1st July 1952 will also be taken into consideration and paid for by them but the employees will not be allowed to send in new bills for any period prior to 1st August 1952.

14. As regards I.A. No. 27/52, in view of the above conclusions, it is unnecessary to consider the special case relating to certain employees of the Bank of India who had opted since September 1950 for the scale of pay and dearness allowance of the Bank of India.

S. PANCHAPAGESA SASTRY, *Chairman.*

BOMBAY,

M. L. TANNAN, *Member.*

Dated the 21st July 1952.

V. L. D'SOUZA, *Member.*

[No. LR-100 (43).]

S. MULLICK, Dy. Secy.